DEPARTMENT OF STATE REVENUE

01-20200077.LOF

Letter of Findings Number: 01-20200077
Individual Income Tax
For the Year 2017

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual failed to provide sufficient documentation and reasoning to prove that she did not claim losses three years in a row within a five-year period. Therefore, Individual's activities did not qualify as an activity engaged in for profit and so did not qualify for a claimed deduction.

ISSUE

I. Individual Income Tax - Loss deduction.

Authority: IC § 6-3-1-3.5; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); I.R.C. § 183; IRC § 183: Activities Not Engaged in For Profit (ATG), https://www.irs.gov/pub/irs-utl/irc183activitiesnotengagedinforprofit.pdf (Last visited on December 14, 2020).

Taxpayer protests the Department's assessment.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who is a subcontractor for an Amish company. As the result of a records comparison with the Internal Revenue Service ("IRS"), the Indiana Department of Revenue ("Department") found that Taxpayer's federal-reported adjusted gross income did not match the Indiana-reported adjusted gross income tax. The Department therefore issued a proposed assessment for tax on the difference between the two reported adjusted gross income amounts. Taxpayer protested the assessment, the Department held a hearing, and this Letter of Findings results. Additional facts will be provided, as necessary.

I. Individual Income Tax - Loss deduction.

DISCUSSION

Taxpayer is a subcontractor for an Amish company. Taxpayer claimed a deduction for not profiting from her business in 2017. However, the IRS denied that deduction and assessed Taxpayer since she claimed the deduction three years in row and thus the IRS does not consider her business an activity engaged in for profit. The Department, because of a records comparison, then assessed Taxpayer for denied deduction amount.

IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid taxes is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar,*

Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

I.R.C. § 183 provides:

> (a) General rule.--*In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section*.
> (b) Deductions allowable.--In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed--
> (1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and
> (2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).
> (c) Activity not engaged in for profit defined.--For purposes of this section, the term "activity not engaged in for profit" means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.
> (d) Presumption.--*If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit.* In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting "2" for "3" and "7" for "5".
> (e) Special rule.--
> (1) In general.--A determination as to whether the presumption provided by subsection (d) applies with respect to any activity shall, if the taxpayer so elects, not be made before the close of the fourth taxable year (sixth taxable year, in the case of an activity described in the last sentence of such subsection) following the taxable year in which the taxpayer first engages in the activity.
> (2) Initial period.--If the taxpayer makes an election under paragraph (1), the presumption provided by subsection (d) shall apply to each taxable year in the 5-taxable year (or 7-taxable year) period beginning with the taxable year in which the taxpayer first engages in the activity, if the gross income derived from the activity for 3 (or 2 if applicable) or more of the taxable years in such period exceeds the deductions attributable to the activity (determined without regard to whether or not the activity is engaged in for profit).
> (3) Election.--An election under paragraph (1) shall be made at such time and manner, and subject to such terms and conditions, as the Secretary may prescribe.
> (4) Time for assessing deficiency attributable to activity.--If a taxpayer makes an election under paragraph (1) with respect to an activity, the statutory period for the assessment of any deficiency attributable to such activity shall not expire before the expiration of 2 years after the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the last taxable year in the period of 5 taxable years (or 7 taxable years) to which the election relates. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such an assessment.
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> *(Emphasis Added).*

I.R.C. § 183 generally limits deductions, in the case of an activity engaged in by a taxpayer if the activity is not engaged in for profit. IRC § 183: Activities Not Engaged in For Profit (ATG), p 2. The determination of whether an activity is an activity not engaged in for profit is a factual determination. *Id.* Neither the Code nor the Regulations provide an absolute definition. *Id.* They instead serve to provide guidance in formulating the facts necessary to determine whether an activity is a not-for-profit activity. *Id.*

Taxpayer provided returns from 2015-2017. Those returns showed that Taxpayer claimed losses in each one of those years. I.R.C. § 183(d) provides that "[I]f the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years. . . such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit." Thus, the opposite is true. If Taxpayer claimed a loss for three or more of the taxable years in the period of 5 consecutive taxable years, such activity is not engaged in for profit. Taxpayer failed to provide the Department with evidence to the contrary. In fact, Taxpayer confirmed the IRS's ruling by providing documentation in which claimed loss is in tax years 2015, 2016,

and 2017. Under IC § 6-8.1-5-1(c), it is the responsibility of Taxpayer to prove the Department's assessment wrong. Finally, the fact remains that Taxpayer's federal adjusted gross income was adjusted by the IRS at the federal level and Indiana bases its adjusted gross income off of that federally determined amount. Taxpayer has not established that the federal amount has been readjusted to match the amount reported to Indiana. Taxpayer failed to meet its burden under IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is denied.

December 22, 2020

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An html version of this document.